



General Assembly

Distr.
GENERAL

A/CN.9/453
3 March 1999

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Thirty-second session
Vienna, 17 May - 4 June 1999

PROVISIONAL AGENDA, ANNOTATIONS THERETO AND SCHEDULING OF MEETINGS OF THE THIRTY-SECOND SESSION

Note by the Secretariat

I. PROVISIONAL AGENDA

1. Opening of the session
2. Election of the officers
3. Adoption of the agenda
4. Privately financed infrastructure projects
5. Electronic commerce
6. Receivables financing: assignment of receivables
7. Monitoring implementation of the 1958 New York Convention
8. International commercial arbitration: possible future work
9. Case law on UNCITRAL texts (CLOUT)
10. Training and technical assistance
11. Status and promotion of UNCITRAL legal texts
12. General Assembly resolutions on the work of the Commission
13. Co-ordination and co-operation
14. Other business
15. Date and place of future meetings
16. Adoption of the report of the Commission

II. ANNOTATIONS TO THE PROVISIONAL AGENDA

Item 1. Opening of the session

The thirty-second session will be held at the Vienna International Centre from 17 May to 4 June 1999. The session will be opened on Monday, 17 May 1999, at 10:00 a.m. The Commission is composed of the following member States: Algeria, Argentina (alternates with Uruguay annually starting in 1998), Australia, Austria, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Colombia, China, Egypt, Fiji, Finland, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Nigeria, Paraguay, Romania, Russian Federation, Singapore, Spain, Sudan, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, and Uruguay (alternates with Argentina annually starting in 1999). In addition, States not members of the Commission, as well as invited international organizations, may attend as observers and participate in the deliberations.

Item 2. Election of officers

Pursuant to a decision taken by the Commission at its first session, the Commission elects, for each session, a Chairman, three Vice-Chairmen and a Rapporteur.

Item 3. Adoption of the agenda

It is suggested that all items be considered in plenary.

Item 4. Privately financed infrastructure projects

At its twenty-ninth session, in 1996, the Commission decided to prepare a legislative guide on build-operate-transfer (BOT) and related types of privately financed infrastructure projects (A/51/17, paras. 225-230) for the purpose of assisting national authorities and legislative bodies that wished to establish a favourable legal framework for promoting infrastructure development through private investment.

At its thirtieth session, in 1997, the Commission, on the basis of the report A/CN.9/438 and its addenda 1 to 3, exchanged views on the nature of the issues to be discussed in the legislative guide and possible methods for addressing them and considered a number of specific suggestions (A/52/17, paras. 231-246).

At its thirty-first session, in 1998, the Commission considered the proposed structure of the legislative guide (A/CN.9/444); a draft of the introduction to the legislative guide with the title "Introduction and background information on privately financed infrastructure projects" (A/CN.9/444/Add.1); and drafts of chapters I, "General legislative considerations" (A/CN.9/444/Add.2), II, "Sector structure and regulation" (A/CN.9/444/Add.3), III, "Selection of the concessionaire" (A/CN.9/444/Add.4) and IV, "Conclusion and general terms of the project

agreement" (A/CN.9/444/Add.5). The Commission considered various specific suggestions concerning the draft chapters, as well as proposals for changing the structure of the legislative guide and reducing the number of its chapters (A/53/17, paras. 12-206). The Commission requested the Secretariat to proceed in the preparation of future chapters for submission to the thirty-second session of the Commission.

At the current session, the Commission will have before it a document setting out the revised structure of the legislative guide (A/CN.9/458); a revised draft of the introduction (A/CN.9/458/Add.1); a revised draft of chapter I, "General legislative considerations" (A/CN.9/458/Add.2); a draft of chapter II, "Government support" (A/CN.9/458/Add.3); a revised draft of chapters III, "Selection of the concessionaire" (A/CN.9/458/Add.4) and IV, "The project agreement" (A/CN.9/458/Add.5); and drafts of chapters V, "Infrastructure development and operation" (A/CN.9/458/Add.6), VI, "End of project term, extension and termination" (A/CN.9/458/Add.7), VII, "Governing law" (A/CN.9/458/Add. 8) and VIII, "Settlement of disputes" (A/CN.9/458/Add.9).

It is suggested that the Commission devote the first eight days of the session (17 to 27 May) to an in-depth consideration of the draft chapters. It is expected to consider in particular the revised structure of the legislative guide, whether the draft chapters cover the relevant issues, whether statements made adequately address the practical needs of privately financed infrastructure projects and whether the advice given is appropriate. The Commission may wish to consider whether the legislative recommendations, as currently formulated, adequately reflect the notion of concise legislative principles, as contemplated by the Commission (A/53/17, para. 204). The Commission may also wish to identify any issues for which the formulation of model legislative provisions would increase the value of the legislative guide (A/53/17, para. 21).

Item 5. Electronic commerce

At its thirtieth session (1997), the Commission endorsed the conclusions reached by the Working Group on Electronic Commerce at its thirty-first session with respect to the desirability and feasibility of preparing uniform rules on issues of digital signatures and certification authorities, and possibly on related matters (A/CN.9/437, paras. 156-157). The Commission entrusted the Working Group with the preparation of uniform rules on the legal issues of digital signatures and certification authorities. With respect to the exact scope and form of such uniform rules, it was generally agreed that no decision could be made at this early stage of the process. It was felt that, while the Working Group might appropriately focus its attention on the issues of digital signatures in view of the apparently predominant role played by public-key cryptography in the emerging electronic-commerce practice, the uniform rules to be prepared should be consistent with the media-neutral approach taken in the UNCITRAL Model Law on Electronic Commerce. Thus, the uniform rules should not discourage the use of other authentication techniques. Moreover, in dealing with public-key cryptography, those uniform rules might need to accommodate various levels of security and to recognize the various legal effects and levels of liability corresponding to the various types of services being provided in the context of digital signatures. With respect to certification authorities, while the value of market-driven standards was recognized by the Commission, it was widely felt that the Working Group might appropriately envisage the establishment of a minimum set of standards to be

met by certification authorities, particularly where cross-border certification was sought (A/52/17, paras. 249-251).

The Working Group began the preparation of uniform rules for electronic signatures at its thirty-second session (January 1998). At its thirty-first session, the Commission had before it the report of the Working Group (A/CN.9/446). The Commission noted that the Working Group, throughout its thirty-first and thirty-second sessions, had experienced manifest difficulties in reaching a common understanding of the new legal issues that arose from the increased use of digital and other electronic signatures. It was also noted that a consensus was still to be found as to how those issues might be addressed in an internationally acceptable legal framework. However, it was generally felt by the Commission that the progress realized so far indicated that the draft Uniform Rules on Electronic Signatures were progressively being shaped into a workable structure. The Commission reaffirmed the decision made at its thirty-first session as to the feasibility of preparing such Uniform Rules and expressed its confidence that more progress could be accomplished by the Working Group at its thirty-third session on the basis of the revised draft prepared by the Secretariat (A/CN.9/WG.IV/WP.76). In the context of that discussion, the Commission noted with satisfaction that the Working Group had become generally recognized as a particularly important international forum for the exchange of views regarding the legal issues of electronic commerce and for the preparation of solutions to those issues (A/53/17, paras. 207-211).

The Working Group continued its work at its thirty-third (July 1998) and thirty-fourth (February 1999) sessions on the basis of notes prepared by the Secretariat (A/CN.9/WG.IV/WP.76, 79 and 80). The Commission will have before it the reports of the Working Group on the work of those two sessions (A/CN.9/454 and 457).

Item 6. Receivables financing: assignment of receivables

The Commission, at its twenty-eighth session (1995), decided that work on a uniform law on assignment in receivables financing should be undertaken (A/50/17, paras. 374-381). The Working Group on International Contract Practices continued its work at its twenty-ninth and thirtieth sessions, which were held respectively from 5 to 16 October 1998 at Vienna and from 1 to 12 March 1999 in New York, by reviewing revised articles of a draft Convention on Assignment in Receivables Financing prepared by the Secretariat (documents A/CN.9/WG.II/WP.96, 98 and 102). The Commission will have before it the reports of the Working Group (A/CN.9/455 and 456).

Item 7. Monitoring implementation of 1958 New York Convention

The Commission, at its twenty-eighth session in 1995, approved the project, undertaken jointly with Committee D of the International Bar Association, aimed at monitoring the legislative implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (reports: A/50/17, paras. 401-404; A/51/17, paras. 238-243; A/52/17, paras. 257-259 and A/53/17, paras. 232-235). Stressing that the purpose of the project was not to monitor individual court decisions applying the Convention, the Commission called upon the States Parties to the Convention to send to the Secretariat the laws dealing with the recognition and enforcement of foreign arbitral awards. In November 1995, the Secretariat sent to the States Parties a questionnaire

relating to the legal regime governing the recognition and enforcement of foreign awards, prepared in cooperation with Committee D of the International Bar Association. Subsequent to that date, the Secretariat has repeated its request to the States Parties for the relevant information. As of 3 March 1999, the Secretariat has received 59 replies to the questionnaire. The Secretariat intends to present orally a progress report to the Commission.

Item 8. International commercial arbitration: possible future work

The Commission, in the context of its thirty-first session, held on 10 June 1998 a special one-day conference commemorating the fortieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958). Reports at the conference covered, in addition to issues relating directly to the Convention, matters such as the interplay between the Convention and other uniform texts on international arbitration and practical difficulties that have been encountered in practice but are not satisfactorily addressed in existing legislative or non-legislative texts on arbitration. At the conference various suggestions were made for presenting to the Commission some of the problems identified in practice so as to enable it to consider whether any work by the Commission would be desirable and feasible. The Commission, with reference to the conference, considered that it would be useful to engage in a consideration of possible future work in the area of arbitration at its thirty-second session in 1999, and requested the Secretariat to prepare a note that would serve as a basis for the considerations of the Commission (A/53/17, para. 235). The Commission will have before it a note (A/CN.9/459) to which the Commission may wish to refer in its considerations of possible future work in the area of arbitration.

Item 9. Case law on UNCITRAL texts (CLOUT)

Based on a decision by the Commission at its twenty-first session, in 1988 (A/43/17, paras. 98-109), the Secretariat established a system for collecting, and disseminating information on, court decisions and arbitral awards relating to normative texts emanating from the work of the Commission. The system relies on National Correspondents designated by the States having become parties to an UNCITRAL Convention or having enacted legislation based on an UNCITRAL Model Law. Therefore, approximately 58 such States have designated National Correspondents. The features of that system are explained in the User Guide (A/CN.9/SER.C/GUIDE/1). Abstracts of court decisions relating to the United Nations Sales Convention, the Hamburg Rules and the UNCITRAL Model Arbitration Law are contained in documents A/CN.9/SER.C/ABSTRACTS/1 to 22. A thesaurus of the Sales Convention and an index of cases applying the Sales Convention are contained in documents A/CN.9/SER.C/INDEX/1 and A/CN.9/SER.C/INDEX/2/Rev.2, respectively.

Item 10. Training and technical assistance

The Commission will have before it a note by the Secretariat on this subject (A/CN.9/461).

Item 11. Status and promotion of UNCITRAL legal texts

The Commission will have before it a note by the Secretariat (A/CN.9/462) concerning the present status of the Convention on the Limitation Period in the International Sale of Goods (New York, 1974); United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg); United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980); Convention on the Limitation Period in the International Sale of Goods, concluded at New York on 14 June 1974, as amended by the Protocol of 11 April 1980; United Nations Convention on International Bills of Exchange and International Promissory Notes (New York, 1988); United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 1991); United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995); Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958); UNCITRAL Model Law on International Commercial Arbitration, UNCITRAL Model Law on International Credit Transfers, UNCITRAL Model Law on Procurement of Goods, Construction and Services, UNCITRAL Model Law on Electronic Commerce and UNCITRAL Model Law on Cross-Border Insolvency.

Item 12. General Assembly resolutions on the work of the Commission

The Commission may wish to take note of General Assembly resolution A/RES/53/103 of 26 January 1999 on the report of the United Nations Commission on International Trade Law on the work of its thirty-first session. Copies of the resolution and the report of the Sixth Committee (A/53/632) will be made available at the session.

Item 13. Co-ordination and co-operation

Representatives of other international organizations will be given an opportunity to apprise the Commission of their current activities and possible means of strengthening co-operation. For example, an observer of the Comité Maritime International (CMI) is expected to inform the Commission about the progress of work regarding the collection of information and suggestions on current issues and problems in the field of international transport law.

Item 14. Other business

- (a) The Commission will have before it a note containing a request by the Institute of International Banking Law and Practice that the Commission consider recommending the use of the International Standby Practices (ISP98), endorsed by the Commission on Banking Technique and Practice of the International Chamber of Commerce (A/CN.9/460).
- (b) The Commission will have before it a bibliography of recent writings related to the work of the Commission (A/CN.9/463).
- (c) The Secretariat will present an oral report on the Sixth Annual Willem C. Vis International Commercial Arbitration Moot competition.

Item 15. Date and place of future meetings

(a) Thirty-third session

The thirty-third session will be held at New York. Arrangements have been made for the session to be held from 12 June to 7 July 2000.

(b) Sessions of Working Groups

(i) Working Group on Electronic Commerce

The thirty-fifth session of the Working Group could be held at Vienna from 6 to 17 September 1999 and the thirty-sixth session could be arranged to be held at New York during the first quarter of 2000.

(ii) Working Group on International Contract Practices

The thirty-first session of the Working Group could be held at Vienna from 11 to 22 October 1999.

(iii) Working Group on Insolvency Law

The twenty-second session of the Working Group on Insolvency Law, to be appropriately renamed, could be held at Vienna from 6 to 17 December 1999, if the Commission were to entrust to a Working Group either the review of future draft chapters of the legislative guide on Privately Financed Infrastructure Projects (see above, item 4) or the consideration of possible future work in the field of international commercial arbitration (see above, item 8).

Item 16. Adoption of the report of the Commission

The General Assembly, in paragraph 10 of resolution 2205 (XXI), decided that the Commission should submit an annual report to the General Assembly, and that the report should be submitted simultaneously to the United Nations Conference on Trade and Development for comments. Under a decision of the Sixth Committee (A/7408, para. 3), the report of the Commission is introduced to the General Assembly by the Chairman of the Commission or by another officer of the Bureau designated by the Chairman.

III. SCHEDULING OF MEETINGS

There will be 13 working days available for consideration of the agenda items at the session. The Secretariat would recommend that the agenda items be taken up in numerical order, except that items 7 and 8 should be taken up after item 14, and that the Commission anticipate devoting the first eight days, i.e. Monday, 17 May, to Friday, 21 May and Tuesday, 25 May to Thursday, 27 May to agenda item 4 (after items 1 to 3). Monday, 24 May, is an official United Nations holiday. Items 5 to 14 would then be considered on Friday, 28 May, items 7 and 8 from Monday, 31 May until Wednesday, 2 June, followed by item 15. No meeting will be scheduled for Thursday, 3 June, to

enable the Secretariat to prepare the draft report (see, however, below under IV. Meeting of National Correspondents). Friday, 4 June, will be reserved for the adoption of the report.

Meeting hours will be from 9.30 to 12.30 and 14.00 to 17.00, except on Monday, 17 May, when the meeting will commence at 10.00.

IV. MEETING OF NATIONAL CORRESPONDENTS

Since the twenty-second session of the Commission it has become customary to hold, in conjunction with Commission sessions, meetings of the National Correspondents for the case collection system referred to under agenda item 9. It is planned that the National Correspondents will meet on Thursday, 3 June, when no meeting of the Commission has been scheduled and possibly on Friday, 4 June, after the adoption of the report by the Commission. Further information concerning the precise time and venue of the meeting of National Correspondents will be communicated during the session.

* * *